

REMARKS/ARGUMENTS

The undersigned attorney wishes to thank Examiner Tran for the courtesy of a very helpful telephone interview on Wednesday, December 13, 2006 to discuss the finality of the September 19, 2006 Office Action and the patentability of the pending method claims under 35 U.S.C. § 101. In particular, during the telephone interview, the Examiner advised that the pending method claims may overcome the rejection under 35 U.S.C. § 101 with the addition of a step of displaying the three-dimensional image data. At the conclusion of the telephone interview, the undersigned attorney proposed, and the Examiner agreed, that a Proposed Amendment be submitted to the Examiner via e-mail to lay out the changes to the rejected claims which the Examiner indicated during the telephone interview should overcome the current rejection under 35 U.S.C. § 101. Accordingly, an unsigned copy of the Proposed Amendment was duly submitted via e-mail to the Examiner on December 14, 2006.

Applicants respectfully submit this Amendment, which is substantively identical to the previously submitted Proposed Amendment, as per the Examiner's January 18, 2007 telephone request. Based on the telephone interview with the Examiner on December 13, 2006, it is Applicants' understanding that this Amendment should place the application in condition for allowance and that a Notice of Allowability can be expected in due course.

Upon entry of this Proposed Amendment, Claims 92-159 will be pending in this application. Of these pending Claims, Claims 92, 93, 94, 95, 96, 97, 98, 99, 100, 101,

102 and 131 are in independent form. Claims 92, 93, 96, 97, 98, 102 and 110 have been amended by this Amendment. Claims 1-91 had been canceled previously.

It is respectfully submitted that no new matter has been introduced by this Amendment. Favorable consideration and prompt allowance of all of the pending claims in view of the foregoing amendments and the following remarks are respectfully requested.

In the Office Action Summary (Form PTOL-326) of the September 19, 2006 Office Action, the Examiner checked the box indicating that "This action is FINAL." However, nowhere in the Detailed Action section of the September 19, 2006 Office Action does the Examiner indicate the finality of the action. If the Examiner intended that this Office Action be made final, Applicants respectfully disagree as to the finality of this Office Action for the following reasons:

The September 19, 2006 Office Action withdrew the previously indicated allowability of Claims 92, 93, 96, 97 and 98, which have not been amended by the Applicants since the Examiner's previous indication of allowability, and raises a new ground for rejecting these claims under 35 U.S.C. § 101. (*Compare* Aug. 24, 2005 Office Action, par. 26, *with* Sept. 19, 2006 Office Action, par. 1). A second or any subsequent action on the merits in any application should not be made final where the Examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 C.F.R. § 1.97(c) with the fee set forth in 37 C.F.R. § 1.17(p). (See MPEP 706.07(a)). Applicants respectfully submit

that the final rejection in this Office Action is premature and request that the finality of the rejection in the September 19, 2006 Office Action be withdrawn. (See MPEP 706.07 (c)-(d)). It is respectfully submitted that Applicants should be allowed to treat the September 19, 2006 Office Action as non-final for purposes of their response thereto.

Applicants now address the substantive aspects of the September 19, 2006 Office Action.

Claim Rejections - 35 U.S.C. § 101

In the September 19, 2006 Office Action, while Claims 94, 95, 99-101 and 131-159 were allowed, the Examiner rejected Claims 92, 93, 96, 97, 98 and 102-130 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Examiner further noted that “[a] useful, concrete and tangible result must be either specifically recited in the claim or flow inherently therefrom.” (Sept. 18, 2006, Office Action, par. 1).

However, in the previous August 24, 2005 Office Action, the same Examiner allowed Claims 92, 93, 96, 97 and 98 for the same reasons that Claims 94, 95, 99-101 and 131-159 are now being allowed. (See Aug. 24, 2005 Office Action, par. 26).

It is further submitted that the rejected claims are merely method claims mirroring the same subject matters claimed by the system claims that the Examiner allowed in the current September 19, 2006 Office Action. Accordingly, “useful, concrete and tangible” results are “specifically recited” or “flow inherently” from the rejected method claims, to the same extent that the allowed system claims satisfy this requirement.

While Applicants disagree with the Examiner's position with respect to Claims 92, 93, 96, 97, 98 and 102-130 in the September 19, 2006 Office Action based on the foregoing reasons, to expedite the prosecution of the present application, independent Claims 92, 93, 96, 97, 98 and 102 as well as dependent Claim 110 have been amended to further clarify the invention and emphasize the aspects of useful, concrete and tangible results flowing from the rejected method claims. Applicants respectfully submit that Claims 92, 93, 96, 97, 98 and 102-130 as amended herein meet the requirement of 35 U.S.C. § 101 and are in condition for allowance.

* * *

In light of the foregoing amendments and remarks, Applicants respectfully request that a timely Notice of Allowance with respect to all of the pending claims be issued.

Included herewith is a Petition for a One Month Extension of Time. A check in the amount of \$60.00 is also included herewith to cover the fee for a one-month extension of time for response for a small entity.

No additional fees or extensions of time are believed to be due in connection with filing of this Amendment. However, authorization is given hereby to charge Deposit

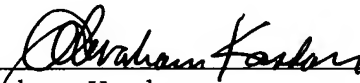
Appl. No. 10/026,935
Amdt. dated Jan. 18, 2007
Reply to Office Action of Sept. 19, 2006

Account No. 01-1785 for any deficiency in fees necessary to preserve the pendency of the subject application, or credit the same in case of overpayment.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Applicants
90 Park Avenue
New York, NY 10016
(212) 336-8000

Dated: New York, New York
January 18, 2007

By: 
Abraham Kasdan
Registration No.: 32,997